IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPLICATION NO. 565 OF 2005
(FOR LEAVE TO APPEAL)
IN
CRIMINAL APPEAL NO. 791 OF 2004

The State of Maharashtra. ..Applicant.

Vs.

Rahul Parmeshwar Jadhav & ors. .. Respondents.

Ms.Usha Kejariwal, Additional Public Prosecutor for the State.

**CORAM : R.M. LODHA AND**
**R.S. MOHITE, JJ.**

**DATED : 31st January, 2005**

**P.C.**

Heard Ms.Usha Kejariwal, the learned Additional Public Prosecutor.

2. The State of Maharashtra is aggrieved by the judgment of the learned IV Ad-hoc Additional Sessions Judge, Pune passed on 20th April, 2004 whereby he acquitted the accused-respondents for the offence punishable under section 395 of the Indian Penal Code.

3. The learned Additional Sessions Judge on the basis of the evidence on record found that the prosecution has not been able to establish that there were five or more persons involved in the crime. He observed thus-

"54. Now the question is whether the

evidence adduced by the prosecution is sufficient to show that, all the accused have involved in the offence or some of them have committed said act. As already discussed above that, the memorandum panchanama pertaining to the accused Rahul Jadhav and Ganesh Jadhav cannot be relied upon, regarding recovery of the stick from the open space, after 10 days of the incident. Moreover, it is to be noted that the complainant Exh.89 filed by complainant Santosh Verma shows that one person got down from Tata Sumo which was standing by the side of road. As per his own version, 2 persons got down from Maruti Van at the time of incident. It means, according to complainant himself, 3 persons only have committed the offence who were these 3 accused? However, the recovery of articles from Macchindra Kandekar alongwith his mobile phone, as well as record of talk between Bhausaheb Adsul and Macchindra Kandekar is brought on record, at Exh.177. It shows that Bhausaheb is also involved in the same. However, there is no specific evidence to show that, who were other persons from Maruti Van. But there is specific evidence connecting accused Bhausaheb Adsul and Macchindra Kandekar with the offence. There is sufficient evidence that accused No.1 Kulkarni had conspiracy with these 2 accused and, therefore only he has stopped his vehicle on the place, so that other accused can do their work as per their pre plan.

55. Therefore, even considering the contents of report Exh.89, made by Santosh Verma, in all there were 3 persons at the time of incident. But the prosecution has added 2 other accused while filing charge sheet. It was the case of prosecution that accused No.2 to 6 with accused No.1 have committed the said offence, as there was conspiracy between them. There is no doubt that the gold ornaments worth Rs.1,00,000/- were seized from the possession of accused Macchindra when he was apprehended by police. The evidence as discussed earlier, shows that, accused Bhausaheb Adsul who is the owner of Tata Sumo No.MH-16/E 3441 and he is also involved in this crime, as the telephonic talk between him and Macchindra is brought on record. Therefore, whatever evidence is available on record, is only against accused Bhausaheb Adsul, Macchindra Kandekar and Sanjay Kulkarni. Therefore,

> considering the nature of evidence as well as, contents in the report Exh.89, there were no.5 or more persons involved in this crime. Therefore, section 395 is not attracted. But it is certain that there was conspiracy between accused Sanjay Kulkarni and Macchindra Kandekar and Bhausaheb Adsul and they have committed the robbery of ornaments worth Rs.10,00,000/-. Therefore, considering the nature of evidence, the offence under section 392 of IPC is proved against accused Sanjay Kulkarni, Macchindra Kandekar and Bhausaheb Adsul."

4. The learned APP could not show any infirmity in consideration of the matter by the learned trial court. We are, thus, satisfied that no case for grant of leave to appeal is made out.

5. Criminal application for leave to appeal is, accordingly, rejected.

**(R.M. LODHA, J.)**

**(R.S. MOHITE, J.)**